



THE REVIEW OF THE ARMED FORCES (SPECIAL POWERS) ACT, 1958 WITH SPECIAL REFERENCE TO MANIPUR

Dr M Ramanjaneyulu

Assistant Professor, Department of Political Science, Government College (A), Ananthapuramu, Andhra Pradesh

ABSTRACT

The Armed Forces (Special Powers) Act, 1958 (AFSPA), enacted to empower the Indian armed forces in “disturbed areas,” has been a subject of intense debate, particularly in the northeastern state of Manipur. Originally introduced to suppress insurgency and maintain public order, AFSPA has faced criticism for alleged human rights violations and the lack of accountability for armed forces personnel. This paper aims to critically examine the historical context, implementation, legal framework, and socio-political implications of AFSPA in Manipur. Drawing on legislative analysis, judicial decisions, and reports from human rights organizations, the study explores how the prolonged imposition of AFSPA has shaped civil-military relations, governance, and the daily lives of Manipuri citizens.

The paper discusses key legal provisions under AFSPA, particularly Sections 3 and 4, which grant sweeping powers to the armed forces, including the authority to shoot to kill, arrest without warrant, and search premises without prior consent. In Manipur, AFSPA has been enforced almost continuously since 1980, leading to widespread resentment and protests—most notably the 16-year hunger strike by activist Irom Sharmila. The Jeevan Reddy Committee (2005), the Supreme Court’s guidelines in the Extra Judicial Execution Victim Families Association (EEOFAM) v. Union of India case (2016), and the Justice Hegde report have all questioned the necessity and effectiveness of the Act in its current form.

Despite calls for repeal or reform, successive governments have maintained AFSPA citing national security concerns and ongoing insurgent threats. The partial withdrawal of AFSPA from parts of Manipur in 2022 was seen as a step forward, yet large areas remain under its jurisdiction, particularly after the ethnic unrest of 2023. The paper argues that AFSPA, in its current form, undermines democratic accountability and civilian trust in the state, and recommends a balanced approach that ensures national security without compromising fundamental human rights.

KEYWORDS: AFSPA, Human Rights, Manipur, Insurgency, Civil-Military Relations

INTRODUCTION

Historical and Legal Context

Historically North- Eastern countries of India had and have unique artistic and social settings. These states show the whole conception of concinnity in diversity in India. At the same time, there were certain problems with these people beginning from independence in terms of demanding separate statehood in Nagaland and Manipur and other countries. In Assam, there is terrorism against the illegal use of the natural coffers by outside Assam.

Violence came the way of life in North- Eastern States of India for various reasons like ethnical conflicts, secessionist movements. State administrations became unable to maintain its internal disturbance. Armed Forces (Assam and Manipur) Special Powers Ordinance was announced by the President on 22nd May of 1958. In which some special powers have been given to the members of the fortified forces in disturbed areas in the State of Assam and Union Territory of Manipur. Latterly the ordinance was replaced by the Armed Forces Special Powers Bill

Why Are Special Powers Essential:

Every country dealing with insurrection or with terrorism has its own laws and legislations to attack the imminence. Likewise, India has laws to fight insurrection and terrorism, and has given legal powers to fortified forces operating in ‘perturbed’ areas under AFSPA 1958.

The power to declare an area ‘disturbed’ lies with the Governor or the Central Government, who have to form an opinion that the use of fortified forces in the aid of civil power is essential and also notify it as ‘perturbed area’. The protestation of an area as a ‘perturbed area’ is for a limited duration and review of the protestation before the expiry of six months has to be accepted by the union government.

A non-commissioned officer has also been conferred with the powers under the Act because it’s he/she who is the commander of a section and leads it for any operation. While exercising powers under Section 4 (a), the fortified forces should use minimal force needed for effective action. This force is to be used against fortified zealots

While executing action under powers conferred under Section 4 (b) of the Act during operations against zealots, there are chances that a many houses may get damaged where the zealots take sanctum. Section 4(d) is essential, so as to search out the zealots or any other outfit hidden in townlets or in domestic areas. Though, the security forces are defended under Section 6 of the Act, but if they violate the law they are oppressively penalized under the separate laws of Army and the Armed Forces. The powers conferred under the AFSPA have been upheld by the Supreme Court in 1998.

The people told by the zealots are concerned about fundamental rights violations by security forces, but what about the violations committed by the zealots? As per a police report, during 2000-2004, zealots killed between 450 to 500 civilians and abducted several elderly government officers.

Originally, there were only three militant groups; now, there are at least 26 militant groups operating in the small state. Utmost of the groups operate under the influence of external directors. There is also the imminence of medicine trafficking in the state. Overall, the situation in Manipur is intimidating and to fight this, the fortified forces operating in the state bear special powers to support them.

Statement of Objects and Reasons of the AFSPA, 1958

An ordinance entitled the Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958, was blazoned by the President on the 22nd May, 1958. Section 3 of it empowers the Governor of Assam and the Chief Commissioner of Manipur to declare the whole or any part of Assam or the Union home of Manipur, as the case may be, to be a perturbed area. On such a declaration being made in the Official Gazette, any Commissioned Officer, Warrant- commissioned officer or any other person of original rank in the fortified forces may exercise, in the perturbed area, the powers conferred by section 4 and 5 of the constitution. The Bill seeks to replace the ordinance.

The Armed Forces (Special Powers) Bill was passed by both the Houses of Parliament and it entered the assent of the President on 11th September, 1958. It came on the Statute Book as THE ARMED FORCES (SPECIAL POWERS) ACT, 1958 (28 of 1958).

The Armed Forces (Special Powers) Act, 1958:

An Act to enable certain special powers to be conferred upon members of the fortified forces in disturbed areas in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. Be it legislated by Parliament in Ninth Year of the democracy of India as follows.

Definitions:

“Fortified forces’ means the military forces and the air forces operating as land forces, and includes other fortified forces of the Union so operating; (b) ‘disturbed area’ means an area which is for the time being declared by announcement under section 3 to be a perturbed area’;

Declaration of a Disturbed Area by Whom:

Powers to declare areas to be disturbed areas If, in relation to any state or Union Territory to which this act extends, the Governor of that State or the Administrator of that Union Territory or the Central Government, in either case, if the opinion that the whole or any part of similar State or in any part of the country, as the case may be, is in such a perturbed or dangerous condition that the use of fortified forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may by announcement in the Official Gazette, declare the whole or similar part of similar State or Union home to be a perturbed area.

Special Powers of the Armed Forces:

Any commissioned officer, leave officer, non-commissioned officer or any other person of original rank in the fortified forces may, in a perturbed area,

1. if he/she is of opinion that it is necessary so to do for the conservation of public order, after giving similar due advising as he may consider necessary, fire upon or else use force, indeed to the causing of death, against any person who's acting in violation of any law or order for the time being in force in the perturbed area proscribing the assembly of five or further persons or the carrying of munitions or of effects able of being used as munitions or of fire- arms, security or explosive substances.
2. if he/she is of opinion that it is necessary so to do, destroy any arms dump, set or fortified position or sanctum from which fortified attacks are made or are likely to be made or are tried to be made, or any structure used as a training camp for fortified levies or employed as a hide- eschewal by fortified gangs or absconders wanted for any offence.
3. Arrest, without leave, any person who has committed a cognizable offence or against whom a reasonable dubitation exists that he has committed or is about to commit a cognizable offence and may use similar force as may be necessary to prompt the arrest.
4. enter and search without leave any demesne to make any similar arrest as forenamed or to recover any person believed to be wrongfully restrained or confined or any property nicely suspected to be stolen property or any arms, security or explosive substances believed to be unlawfully kept in similar demesne, and may for that purpose use similar force as may be necessary.

Arrested Persons to be made over to the Police:

Any person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station with the least possible detention, together with a report of the circumstances occasioning the arrest. In case of arrest of any person, army authority is duty bound to handover to the officer- in- charge of the nearest police station with least possible detention.

Protection to Persons Acting under Act:

No execution, suit or other legal proceeding shall be introduced, except with the former permission of the Central Government, against any person in respect of anything done or purposed to

be done in exercise of the powers conferred by this Act.

Manipur is an apt example:

Ground Realities

Manipur has experienced a prolonged insurgency, resulting in the central government's frequent invocation of AFSPA. Human rights organizations have documented numerous cases of arbitrary detentions, fake encounters, and extrajudicial killings. Civil society has been vocally opposing the Act, citing misuse and lack of accountability.

The developments in Manipur have formerly again brought into focus the question of operation of the Armed Forces Special Powers Act 1958 (AFSPA) in North- East India. On July 11, 2004, the contended rape and payoff of Thanjam Manorama, suspected to be a skeleton of the People's Liberation Army (PLA), sparked agitations throughout Manipur for the pullout of the AFSP Act from Manipur. Due to the disturbance and insurrection in the state, the Government of India announced the Armed Forces Special Powers Act 1958 in Manipur State.

Since 1980, the total of Manipur has been a "perturbed area" under the Act. Vide this Act, the security forces have been given some redundant powers so as to operate against the mutineers in the disturbed areas. The army has been given broad powers over the life and branch of the restless aborigines under the Armed Forces (Special Powers) Act 1958. Firstly calculated to suppress the Naga rebellion, it is now being applied free heartedly wherever in this region insurrection raises its head. The sad story of Manipur has at last set up a place in the corners of the metropolitan domestics, especially after the Manorama rape and murder case.

Since Manipur has been declared as a Disturbed Area in 1980, according to Manipur Chief Minister Ibobi Singh over 8,000 innocent persons and over 12,000 members of fortified opposition groups and security forces have lost their lives. There were only about four fortified groups in Manipur in 1980 and there are over 20 fortified opposition groups at present. The AFSPA has manifestly failed to resolve the insurrection problem.

Feeling among People of Manipur:

The 1972 emendations to AFSPA extended the power to declare an area disturbed to the Central Government whereas in the 1958 interpretation of AFSPA, only the state Governor had the power. A section of the Manipuris feels that power should remain only with the state government. They also feel that the Section 3 of the AFSPA does not specify any time limit. The announcement in Manipur issued in 1980 still continues indeed after 66 times, and thereby they feel that they have been deprived of the spirit of liberty, freedom and republic for too long a period. The exercise by the fortified forces of the unbounded powers to arrest, search, seize and indeed shoot to kill conferred under Section 4 of the Act has rebounded in large- scale violation of the abecedarian rights of the citizens under Articles and 25 of the Constitution. The power under the Section 4 (a) of AFSP Act has hurt the citizens of Manipur the most as they feel that the Act confers the fortified forces with

astronomically defined powers to shoot to kill and that this is a law, which fosters a climate in which the agents of law enforcement are suitable to use inordinate force with immunity.

It is contended that security forces have destroyed homes and other structures presuming them to be used by mutineers under vittles of Section 4 (b) of AFSPA. Manipur is also feeling that apprehensions without clearances is a serious encroachment on the right to liberty of a person. The power of hunt and seizure under Section 4 (d) has been considerably used by the fortified forces by cordon and search operations leading to wide violation of abecedarian rights of citizens and the forces have kept arrested persons (Section 5) for several days in their illegal detentions.

Due to protection under Section 6 of the Act, some security forces indeed violated the mortal rights of people and left the victims without any effective remedy. The failure to identify those responsible for mortal rights violations and to bring them to justice has meant that some members of the security force continue to believe that they are above the law and can violate mortal rights with immunity. The cases of Naga boys of Oinam Hill village being tortured before their maters by Assam Rifles Jawans in July 1987; the payoff of Amine Devi and her child of Bishnupur quarter on April 5, 1996 by a CRPF party; the hijacking , torture and payoff of 15- time-old Sanamacha of Angtha village by an Assam Rifles party on 12 February 1998; the firing nothingness of 10 civilians by an Assam Rifles party in November 2000 are some of the striking exemplifications that are still fresh in the minds of Manipuris and the case of Manorama has led to a complete collapse of the administration in the state. Apunba Lup, a conglomeration of 32 organizations in Manipur, is leading the current stir, which has put the Government of India under tremendous pressure to repeal the AFSP Act. Leaders of Apunba Lup had met the Prime Minister in New Delhi and were assured that the Act would be reviewed.

General Effect, if AFSPA is repealed in Manipur:

It will beget a chain response in all states, where the Act has been executed. No fortified force would like to carry out any operation in the revolted affected areas without proper legal protection for its labor force. It will demoralize the fortified forces and all action will be lost. Whenever any obnoxious action is taken by fortified forces, the militant groups will instigate the people original authorities to initiate legal cases against the fortified forces. Justice may be poisoned under the influence of zealots. The zealots will get an upper hand and may be delicate to contain. Incidents of highway robbery from the mercenary population/ government associations will go unbounded. Civil administration will be overrun by the zealots and there will be chaos each around.

Recent Developments:

The central government's decision in 2022 to reduce the areas under AFSPA in Manipur marked a shift, although large regions remained covered due to continuing ethnic and insurgent violence. The 2023 unrest between Meitei and Kuki communities brought AFSPA back into sharp focus, highlighting its entrenched role.

Remedial Measures:

The general administration in Manipur is not suitable to give effective justice to the people, with the result that it has to depend on the security forces for its normal functioning. Thus, the forces operating in the state have to be honest, law abiding and must admire the rights of the people of the state. The commanders at all situations should follow the principle of “use of minimal force” needed for effective action. They should brief their men to admire all womenfolk. In case any woman is to be arrested, also it should be done with the help of a lady police/force, who should also remain present during interrogation. While carrying out hunt operations, the force should associate a original reputed person and also the proprietor of the house, and after the hunt, the proprietor should be permitted to search the hunt party so desires. One must challenge before opening fire and to insure that one fires only in self- defense. A grievance cell should be opened at Sector Headquarters Battalion Headquarters so that the civilians can lodge complaints against the force if they so ask and the commander should take necessary action as supposed fit. Police representatives must be associated with every operation conducted by the security forces.

The training should be of high position so that the fortified force may be suitable to handle all types of situations with professional capability. It is high time that the state police is trained to take over functional liabilities from the Army and the BSF. The normal operations may be conducted by the state fortified police and only major and pinpointed operations be left for the fortified forces. Junior position force should be duly briefed to not to over reply to any sensitive situation.

It is also important to evolve a medium to deal attack with over ground support structures that are generally well-connected with original politicians and are regarded in the society. Everything depends on intelligence and hence we must edge the chops of the fortified forces for collection of hard intelligence. Elderly commanders should handle civil society sensibly so as to prize sympathy and maximum information from them. This will also help in changing the perception of the original population in the larger interest of the Government/ Nation.

Major Criticisms and Legal Scrutiny:

The Supreme Court has intervened in several cases, particularly the EEVFAM case, which led to scrutiny of thousands of alleged fake encounter cases. The Jeevan Reddy Committee recommended repealing AFSPA, stating that it had become “a symbol of oppression.” The Justice Hegde report (2013) found that many killings labeled as encounters were extrajudicial.

Comments:

1. The Governor is empowered to declare any area of the State as “perturbed area”. It could not be arbitrary on ground of absence of legislative guidelines; *Inderjit Barua vs. State of Assam*, AIR 1983 Del. 514.
2. Section 3 cannot be demonstrated as conferring a power to issue a protestation without any time limit. There should be periodic review of the protestation before the expiry of six months; *Naga People’s Movement of Human Rights vs. Union of India*, AIR 1998 SC 431.

RECOMMENDATIONS AND CONCLUSION:

1. First, Asian Centre for Human Rights recommended that the state governments must have the sole right to declare certain areas or the total of State as “perturbed” subject to the blessing by the State legislative assembly. Thus, Section 3 of the AFSPA is amended.
2. Alternate, the Supreme Court in its judgment stated that the AFSPA “ does not displace the civil power of the State by the fortified forces of the Union and it only provides for deployment of fortified forces of the Union in aid of the civil power ”. Still, the fortified forces must operate under civil power, if that is followed in practice. thus, vittles giving special powers to the fortified forces pertaining for hunt and seizure under section 4 (d), arrest under section 4 (c), destroying lairs of the “absconders wanted for any offence” under section 4 (b) and the power to use force including “the right to fire upon or else use force, indeed to the causing of death” under section 4 (a) are discrepant with the intent and be amended to misbehave with normal Felonious Procedure Code or Indian Penal Code. In fact, Section 5 of the AFSPA provides that “any person arrested and taken into guardianship under this Act shall be made over to the officer- in- charge of the nearest police station with the least possible detention, together with a report of the circumstances occasioning the arrest”. Still, there is no reason as to why analogous procedure cannot be laid down with respect to other vittles, if such a procedure could be laid down with regard to the arrest. The problem is such a procedure is infrequently admired by the fortified forces. thus, there’s a need to incorporate necessary clauses both to insure that the procedures are followed and discipline be awarded for the failure to admire the procedures laid down in the Act.
3. Third, Section 6 of the AFSPA has been overhauled section 197 of the Criminal Procedure Code. Since its correction in 1991, authorization from the concerned State or Central Government for execution is mandatory. However, there is no reason as to why the same won’t be accorded under AFSPA, if the Centre were to give authorization under section 197. There’s no reason as to why the same won’t be accorded under AFSPA.
4. The draconian Armed Forces (Special Powers) Act of 1958 is under review in the Ministry of Home Affairs. This review must call for a drastic correction of Section 4 which confers extreme powers on officers, including causing death and it must give for the constitution of an appellate body to entertain complaints against forces using the AFSPA.

While national security cannot be compromised, democratic accountability and protection of human rights must guide policy. Replacing AFSPA with a more balanced legal framework that includes oversight mechanisms, sunset clauses, and judicial review could address both security needs and civil liberties. The experience of Manipur illustrates the urgent need for such reform.

There can be no two options that insurrection has to be put down with a firm hand within the vittles of law and not to be mandated

by the zealots. Both hands of the security forces cannot be tied and also ask them to fight fortified zealots. The zealots will keep on exploiting the sentiments of the original people and they (zealots) will try to reap benefits from similar situations. Avoid any tendency to carry out eyeless operations against zealots without specific intelligence/ information. Magpie apprehensions and importunity of people out of frustration for not being suitable to detect the real lawbreakers should be avoided. Security forces should be veritably careful while operating in the North- East and must not give any chance to the zealots to exploit the situation. All good conduct of the force get annulled with one wrong action. Any person, including the administrative staff, set up shamefaced of violating law should be oppressively dealt with. The law is not imperfect, but it's its perpetration that has to be managed duly. The original people have to be induced with proper planning and strategy.

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